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No. 87-1733

In the Supreme Court of the United States

OCTOBER TERM, 1987

WILLIAM C. SAMPSON, ET UX., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

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Petitioners contend that the Rules of Practice and Procedure of the United States Tax Court violate the Due Process Clause because they did not allow petitioners' family trust to intervene as a party-petitioner in this litigation respecting petitioners' individual federal income tax liability.

1. Petitioners created a "family trust" in furtherance of a scheme to avoid payment of the tax due on the income earned by petitioner William Sampson as an osteopath. That personal income was assigned to the trust, and the trust then purported to deduct petitioners' personal, living, and family expenses as business or administrative expenses of the trust. Pet. App. 32, 33-34. The Commissioner of Internal Revenue issued a notice of deficiency to petitioners in which he determined that the income reported by the trust was instead taxable to petitioners (*id.* at 33). No notice of deficiency was issued to the trust (*id.* at 40).

Petitioners initiated an action in the United States Tax Court for a redetermination of the deficiencies asserted by the Commissioner. During these proceedings, the trust filed a motion to intervene as a party-petitioner in the Tax Court. The Tax Court denied that motion without explanation (see Pet. App. 37), but the court stayed the proceedings to allow the trust to appeal.

The court of appeals vacated the Tax Court's order and remanded for further proceedings (Pet. App. 36-42). Finding the Tax Court's denial of the motion to intervene to be an appealable order (*id.* at 37-40), the court held that the trust could not intervene as a party-petitioner because it had not been issued a notice of deficiency (*id.* at 40).* The court of appeals further held, however, that the Tax Court has discretionary authority to permit intervention as a nonparty (*id.* at 40-41). Because the Tax Court had not given any reason for its denial of the trust's motion to intervene, the court of appeals vacated the Tax Court's order and remanded the case for the court to determine, in the exercise of its discretion, whether intervention by the trust as a nonparty was appropriate (*id.* at 41-42).

On remand, the Tax Court determined that the trust had no justiciable interest in the litigation and, accordingly, denied its request to intervene (Pet. App. 47-52). No appeal was taken from that denial. Thereafter, the Tax Court

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* With certain limited exceptions not pertinent here, it is well settled that only individuals or entities that have been issued a notice of deficiency may appear as party-petitioners in the Tax Court. See 26 U.S.C. 6213; *Laing* v. *United States*, 423 U.S. 161, 165 (1976); *Abrams* v. *Commissioner*, 814 F.2d 1356, 1357 (9th Cir. 1987); *Alford* v. *Commissioner*, 800 F.2d 987, 988 (10th Cir. 1986); *Donley* v. *Commissioner*, 791 F.2d 383, 384 (5th Cir.), cert. denied, 479 U.S. 885 (1986); *Cincinnati Transit, Inc.* v. *Commissioner*, 455 F.2d 220, 221 (6th Cir. 1972); *Medeiros* v. *Commissioner*, 77 T.C. 1255, 1260 (1981).

resumed the trial of petitioners' case and sustained the deficiencies determined by the Commissioner (*id.* at 43-46z). The court held that petitioners' family trust scheme was ineffective to shift to the trust the incidence of the tax on the income earned by William Sampson as an osteopath (*id.* at 46o-46s). The court of appeals affirmed on the basis of the Tax Court's opinion (*id.* at 32-35).

2. Petitioners contend (Pet. 19-28) that the failure of the Tax Court's rules to permit the intervention of the trust as a party violates the Due Process Clause of the Fifth Amendment. At the outset, we question whether this issue is properly before the Court. The trust did not take an appeal from the second order denying intervention and thus was not a party in the court of appeals below. Indeed, the question of intervention was not raised at all on the second appeal. Petitioners have no standing to raise on their own the denial to the trust of the right to intervene, and, as laymen, they cannot be said to be representing the trust in this Court. In any event, petitioners' contention is wholly without merit.

It has been clear since the seminal case of *Lucas* v. *Earl*, 281 U.S. 111 (1930), that, for purposes of the federal tax laws, income is taxable to the person who earns it, regardless of what arrangements he may make to divert the payment of it elsewhere. Indeed, this Court has described this principle regarding "anticipatory assignments of income" as "a cornerstone of our graduated income tax system." *United States* v. *Basye*, 410 U.S. 441, 449-450 (1973). In this case, petitioner William Sampson made an anticipatory assignment of the income earned by him as an osteopath to a trust established for petitioners' benefit. Accordingly, the courts below correctly held (Pet. App. 34-35, 46o-46s) that, under *Lucas* v. *Earl*, *supra*, and its progeny, that income is taxable to him without regard to the validity of the assignment to the

trust under state law. See, *e.g.*, *Neely* v. *United States*, 775 F.2d 1092 (9th Cir. 1985); *Holman* v. *United States*, 728 F.2d 462 (10th Cir. 1984); *Schulz* v. *Commissioner*, 686 F.2d 490 (7th Cir. 1982).

The proceedings in the Tax Court to determine whether the assigned income should be taxable to petitioner William Sampson did not implicate any rights or interests of the trust or its beneficiaries; accordingly, the failure to allow the trust to intervene as a party plainly did not violate due process. As the Tax Court explained (Pet. App. 50-52), its jurisdiction was limited to adjudicating the correctness under federal law of the deficiencies in petitioners' tax asserted by the Commissioner. A determination as to the property rights of the trust and its beneficiaries under state law was not necessary to the Tax Court's decision respecting petitioners' income tax liabilities; consequently, the court's decision could not have any binding effect on the trust or any other parties not before the court, and there was no reason to allow the trust to intervene in the proceedings.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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